

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
	)	
State of Hawaii Request for Waiver	)	

**ORDER**

**Adopted: July 25, 2008**

**Released: July 25, 2008**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing the 700 MHz band.<sup>1</sup> In the *Second Report and Order*, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In order to accommodate this broadband allocation, the Commission consolidated the public safety narrowband channels so that they are located at 769-775/799-805 MHz.<sup>2</sup> Subject to certain conditions and limitations, the Commission determined that the Upper 700 MHz Band D Block licensee will pay the costs associated with relocating public safety narrowband operations to the consolidated channels.<sup>3</sup> To facilitate the relocation process, and clearly define the costs that would be entitled to reimbursement, the Commission required every 700 MHz band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to certify the number of narrowband mobile and portable handsets and base stations serving these handsets in operation as of August 30, 2007 (30 days following adoption of the *Second Report and Order*).<sup>4</sup> The Commission also prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007 would be ineligible for relocation funding.<sup>5</sup>

<sup>1</sup> Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

<sup>2</sup> *Id.* at ¶ 329.

<sup>3</sup> *Id.* at ¶ 336.

<sup>4</sup> *Id.* at ¶¶ 336-337.

<sup>5</sup> *Id.* at ¶ 339.

2. On October 23, 2007, the State of Hawaii (Hawaii) requested waiver relief concerning narrowband operations outside of the consolidated channels in support of its 700 MHz system.<sup>6</sup> Hawaii requests waiver of the provision of the *Second Report and Order* prohibiting the authorization of new narrowband operations outside the consolidated channels as of August 30, 2007. For the reasons discussed below, we grant the Waiver Request in part on a limited basis, and defer action on the Waiver Request in all other respects.

## II. DISCUSSION

3. As an initial matter, several parties have filed petitions for reconsideration of provisions of the *Second Report and Order*, including the prohibition on authorization of new narrowband operations outside of the consolidated channels following August 30, 2007, and the limitation on cost reimbursement to equipment that was in operation as of August 30, 2007.<sup>7</sup> In addition, on May 14, 2008, the Commission issued a *Second Further Notice of Proposed Rulemaking* seeking comment on, among other issues, narrowband relocation, including the petitions for reconsideration of the *Second Report and Order*.<sup>8</sup> In the interests of public safety, we provide Hawaii limited waiver relief of the prohibition on new narrowband operations outside of the consolidated channels after August 30, 2007. As further explained below, the Commission will determine the duration of such relief, and whether Hawaii is entitled to reimbursement for relocation of equipment installed after August 30, 2007, after fully considering the petitions and associated public record submitted in response to the *Second Further Notice*.

4. Section 1.925 states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest,<sup>9</sup> or the applicant has no reasonable alternative.<sup>10</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>11</sup>

5. On November 14, 2007, the Commission adopted and released an Order that granted the Commonwealth of Virginia, Virginia State Police (Virginia) limited interim waiver relief to enable Virginia to continue to deploy new narrowband operations outside of the consolidated narrowband channels.<sup>12</sup> In this Order, the Commission found that it is in the public interest to "provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed."<sup>13</sup> We next

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<sup>6</sup> Request for Waiver to Second Report and Order, State of Hawaii, PS Docket No. 06-229 (filed Oct. 23, 2007) (*Waiver Request*).

<sup>7</sup> See, e.g., Commonwealth of Virginia, Virginia State Police, Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 (filed Sept. 24, 2007).

<sup>8</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-128 (2008) (*Second Further Notice*).

<sup>9</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>10</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>11</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>12</sup> Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, 22 FCC Rcd 20290 (2007) (*Virginia Order*).

<sup>13</sup> *Id.* at ¶ 7.

examine whether Hawaii satisfies these criteria.

6. In its *Waiver Request*, Hawaii makes a general claim of potential public harm should it be unable to continue to deploy additional narrowband operations following August 30, 2007, characterizing its 700 MHz system as critical to public safety.<sup>14</sup> Hawaii states that it has a longstanding plan and contract in place to deploy 13 single-channel conventional (non-trunked) 700 MHz repeaters in Hawaii under the State's license.<sup>15</sup> According to Hawaii, it has deployed four repeaters, one of which operates in the prohibited narrowband portion of the spectrum, and has nine repeaters ready for deployment, five of which are also tuned to channels in the prohibited narrowband portion of the spectrum.<sup>16</sup> Hawaii states that the installation of the five repeaters was scheduled for July 2008. Hawaii also states that it has purchased 200 subscriber radios that operate in the 700 MHz band, of which 20 remain to be deployed.<sup>17</sup> Hawaii states that all of its subscriber units will be reprogrammed using State of Hawaii resources and that Hawaii will not be seeking reimbursements for subscriber unit reprogramming.<sup>18</sup>

7. Accordingly, we find that Hawaii has made a sufficient showing of "potential public harm," based on its representation that its ability to respond to a public safety emergency would be compromised should it be unable to continue to deploy new narrowband operations outside of the consolidated narrowband channels. We also find that Hawaii has provided sufficient "evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed." Having satisfied the criteria established by the Commission in the *Virginia Order*, we find it to be in the public interest to grant Hawaii limited interim waiver relief to deploy new narrowband operations outside the consolidated bands following August 30, 2007, until the Commission resolves the outstanding narrowband issues pending in the *Second Further Notice*. For the same reason, we defer ruling on the continued duration of this limited waiver relief, and whether Hawaii would be entitled to cost reimbursement for any new narrowband operations deployed following August 30, 2007.

8. Our decision to permit Hawaii to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to the Commission's subsequent ruling on these outstanding waiver issues – including whether Hawaii, notwithstanding its statement that it will fund on its own the reprogramming of its subscriber units, would be entitled to reimbursement for the costs associated with relocating any additional narrowband operations outside of the consolidated narrowband channels that Hawaii deploys after August 30, 2007. To the extent, however, that Hawaii is able to deploy in the consolidated bands and avoid the need for relocation, we encourage it to do so. Such deployment would eliminate any future disruptions to operations due to the need to relocate, and would reduce the overall cost of the relocation process.<sup>19</sup>

### III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and Section 1.925 of

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<sup>14</sup> *Waiver Request* at 2.

<sup>15</sup> *Id.* at 1. Hawaii states that it contracted with Fisher Scientific through Hawaii-based Pacific Wireless Communications in late 2006 to purchase, configure and install Motorola brand repeaters as part of its State Law Enforcement Coalition 700 MHz Radio System. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> To the extent that waiver of any Commission rules would be required to enable immediate deployment in the consolidated bands, such requests may be filed in accordance with the Commission's waiver rules, 47 C.F.R. § 1.925. We also note that public safety entities in need of commencing operations in advance of Commission approval of a 700 MHz regional plan should file a request for Special Temporary Authority. See Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and Provides Further Guidance, 22 FCC Rcd 21889, 21892 (2007).

the Commission's rules, 47 C.F.R. § 1.925, THIS ORDER in PS Docket No. 06-229 and WT Docket No. 96-86 is ADOPTED.

10. IT IS FURTHER ORDERED that the Waiver Request filed by State of Hawaii on October 23, 2007 is GRANTED to the extent discussed herein, and that action on the Waiver Request is DEFERRED IN ALL OTHER RESPECTS.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch  
Chief  
Public Safety and Homeland Security Bureau